

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-shl

4 Adv. Case No. 19-08289-shl

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6 In the Matter of:

7
8 PURDUE PHARMA,

9
10 Debtor.

11 - - - - - x

12 PURDUE PHARMA L.P. et al.,

13 Plaintiff,

14 v.

15 COMMONWEALTH OF MASSACHUSETTS, et al.,

16 Defendants.

17 - - - - - x

18 United States Bankruptcy Court

19 300 Quarropas Street, Room 248

20 White Plains, NY 10601

21
22 January 24, 2023

23 11:10 A.M.

1 B E F O R E :

2 HON SEAN H. LANE

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: A. VARGAS

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1 HEARING re Omnibus Hearing

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3 HEARING re Doc. #5269 Motion to File Late Claim by Richard
4 Paiva

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6 HEARING re Doc. #5345 Debtors' and the Official Committee of
7 Unsecured Creditors' Joint Response to Motions to File Proof
8 of Claim After Claims Bar Date

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10 HEARING re Doc. #5283 Notice of Hearing Regarding Late Claim
11 Motion Re: Richard Paiva

12

13 HEARING re 19-08289-shl Purdue Pharma LP et al. v.
14 Commonwealth of Massachusetts et al. Status and Scheduling
15 Conference Re: Doc. #2 Motion for Preliminary Injunction
16 (Benjamin S. Kaminetzky)

17

18 HEARING re Status & Scheduling Conference Re: Doc #400
19 Thirty-First Amended Order Granting Motion for a Preliminary
20 Injunction Signed on 12/5/2022

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22 HEARING re Status & Scheduling Conference Re: Doc. #402
23 Opposition to Extension of Preliminary Injunction to Lac La
24 Ronge Indian Band Complaint Filed on Behalf of Lac La Ronge
25 Indian Band (Allen Joseph Underwood II)

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HEARING re Status & Scheduling Conference Re: Doc. #403

Reply in Further Support of Application of the Preliminary
Injunction to Plaintiff Lac La Ronge Indian Band
(Kaminetzky, Benjamin)

HEARING re Status & Scheduling Conference Re: Doc. # 404

Declaration of Benjamin S. Kaminetzky in Support of Debtor's
Reply in Further Support of Application of the Preliminary
Injunction to Plaintiff Lac La Ronge Indian Band (Benjamin
S. Kaminetzky)

HEARING re Status & Scheduling Conference Re: Doc. #405

Motion for Leave to Exceed the Page Limit in Filing Reply in
Further Support of Application of the Preliminary Injunction
to Plaintiff Lac La Ronge Indian Band (Marc Joseph Tobak)

Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 DAVIS POLK WARDWELL, LLP

4 Attorneys for the Debtors

5 450 Lexington Avenue

6 New York, NY 10017

7

8 BY: KATHRYN BENEDICT

9 BENJAMIN KAMINETZKY

10

11 AKIN GUMP STRAUSS HAUSER FELD, LLP

12 Attorneys for the Official Committee of Unsecured
13 Creditors

14 One Bryant Park

15 New York, NY 10036

16

17 BY: ARIK PRIES

18

19 LITE DEPALMA GREENBERG AFANDAOR, LLC

20 Attorneys for Various Canadian Creditors

21 570 Broad Street, Suite 1201

22 Newark, NJ 07102

23

24 BY: ALLEN J. UNDERWOOD

25

1 ALSO PRESENT:
2 ROXANA ALEALI
3 MIKE ATKINSON
4 JASMINE BALL
5 BROOKS BARKER
6 GABRIELLE BECKER
7 BRIANNA B. BILTER
8 DAVID E. BLABEY
9 SARA BRAUNER
10 JULIUS CHEN
11 DANIEL CONNOLY
12 DYLAN CONSLA
13 JABRISKA COTTON
14 KENNETH H. ECKSTEIN
15 LAWRENCE FOGELMAN
16 CAROLAN GANGE
17 MATTHEW J. GOLD
18 IRVE GOLDMAN
19 UDAY GORREPATI
20 ROCHELLE GUITON
21 TAYLOR HARRISON
22 MITCHELL HURLEY
23 ANA LUCIA HURTADO
24 GREGORY JOSEPH
25 WENDY KANE

1 MARC KESSELMAN
2 MARA LEVANTHAL
3 JEFFREY A. LIESEMER
4 MICHELE MEISES
5 MAURA KATHLEEN MONAGHAN
6 GEORGE O'CONNOR
7 LESLIE PAPPAS
8 STEVEN D. POHL
9 KATHERINE PORTER
10 RACHAEL RINGER
11 CHRISTOPHER ROBERTSON
12 JEFFREY J. ROSEN
13 JASON RUBINSTEIN
14 ALEC SCHWARTZ
15 PAUL KENAN SCHWARTZBERG
16 J. CHRISTOPHER SHORE
17 JESSICA SIMONELLI
18 MARC F. SKAPOF
19 KATE SOMERS
20 JOSEPH SORKIN
21 MARC JOSEPH TOBAK
22 ELI J. VONNEGUT
23 THEODORE WELLS, JR.
24 FRED WILLUMSEN
25 KAILIA ZAHARIS

1 ALEXANDER LEES

2 ERIC STODOLA

3 GERARD UZZI

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1 P R O C E E D I N G S

2 THE COURT: Good morning. This is Judge Sean Lane
3 in the United States Bankruptcy Court for the Southern
4 District of New York and we are here this morning for a
5 hearing in Purdue Pharma LP, a Chapter 11 case that's
6 jointly administered. And the matters on for today are set
7 forth at the -- on an agenda filed -- I'm sorry, did I hear
8 something from someone? All right. The agenda that's filed
9 at Docket No. 5364. So we'll start the hearing as we always
10 do with appearances. So let me find out who is here on
11 behalf of the Debtors.

12 MR. KAMINETZKY: Good morning, Judge Lane, this is
13 Benjamin Kaminetzky of Davis Polk and Wardwell for the
14 Debtors. I'm here today with my colleague Kathryn Benedict.
15 Kathryn will be handling the late claims motion which is the
16 first item on the agenda and then I'll be handling the
17 status conference on the Lac La Ronge preliminary injunction
18 matter, which is the second and final item on today's
19 agenda.

20 THE COURT: All right, thank you. Let me find out
21 who's here on behalf of the Official Committee of Unsecured
22 Creditors.

23 MR. PREIS: Good morning. Arik Preis from Akin
24 Gump Strauss Hauer and Feld on behalf of the Official
25 Committee of Unsecured Creditors.

1 THE COURT: All right, good morning. And let me
2 find out who is here on behalf of the folks who filed the
3 opposition to extending the preliminary injunction, that is
4 the folks who have filed the lawsuit. So let me get that
5 appearance.

6 MR. UNDERWOOD: Good morning, Your Honor. Allen
7 Underwood of the firm of Lite DePalma Greenberg and Afanador
8 on behalf of the plaintiffs and creditors, Lac La Ronge
9 Indian Band.

10 THE COURT: All right.

11 MR. UNDERWOOD: Thank you.

12 THE COURT: Good morning to you. And let me find
13 out what other folks are here who need to make an
14 appearance. I recognize that there are always a lot of
15 folks who are on, registered for this, most of whom, who
16 don't make an appearance. So in the interest of brevity,
17 I'll just throw the appearances open to anyone else who
18 needs to make one. All right.

19 So with that, I will turn it over to Mr.
20 Kaminetzky to start us off. You're on mute, Counsel. It's
21 a challenge of the world we live in.

22 MR. KAMINETZKY: Can you hear me now?

23 THE COURT: Yes, I can.

24 MR. KAMINETZKY: As mentioned, there's only two
25 items on today's agenda. The first is the late (audio

1 drops) motion and for that I'm going to (audio drops) over
2 to my colleague Ms. Kathryn Benedict.

3 THE COURT: All right, thank you. Ms. Benedict.

4 MS. BENEDICT: Hello. Good morning, Your Honor.
5 This is Kathryn Benedict of Davis Polk and Wardwell LLP on
6 behalf of the Debtors. Can I be heard clearly?

7 THE COURT: You can be heard just fine. Thank you
8 so much.

9 MS. BENEDICT: Thank you. As Mr. Kaminetzky
10 mentioned, the first item on the agenda is the late claim
11 motion that was filed by Mr. Richard Paiva, which is at
12 Docket No. 5269. I don't believe Mr. Paiva is on the Zoom
13 today.

14 THE COURT: All right, that's probably worth
15 clarifying at this point. Is Mr. Paiva on our zoom call?
16 All right, let the record reflect that he has not made an
17 appearance and I see that he is, based on looking at Docket
18 5269, there may be a reason for that. I know he's been
19 incarcerated at the time of submitting that letter November
20 15th of 2022. So with that, I'll turn it back to you,
21 Counsel.

22 MS. BENEDICT: Thank you, Your Honor. I will be
23 brief as the position of the Debtors and the Unsecured
24 Creditors Committee is set out in our joint response, which
25 can be found at Docket No. 5345. Of course, if the Court

1 has any questions after my brief presentation, I'm happy to
2 answer them.

3 After careful consideration of the facts and the
4 Pioneer factors, the Debtors and the Committee believe that
5 Mr. Paiva's late claim motion is substantially similar to
6 three other recent late claim motions on which the Court has
7 previously deferred a ruling in August and October of last
8 year and thus should be treated the same. The Court's
9 rulings on those previous late claim motions can be found at
10 Dockets 5030 and 5199.

11 In particular, diligence performed by counsel to
12 the Creditors Committee confirmed that Mr. Paiva has been
13 incarcerated in Rhode Island since 2009, well before and
14 after the bar date period, as Mr. Paiva asserted in his
15 motion. While Mr. Paiva's incarceration is on its own
16 insufficient to justify the filing of a late claim, the
17 Debtors and Creditors Committee believe that deferring a
18 decision on the motion is proper in light of both Mr.
19 Paiva's lengthy incarceration and the recent claim motions
20 that the Court has postponed.

21 Applying the same approach to this late claim
22 motion as was applied to those others recently filed and
23 deferring the motion until the first omnibus hearing that is
24 held at least 21 days after entry of a final order approving
25 the Debtors' modified Chapter 11 plan of reorganization will

1 allow the Debtors, the Creditors Committee and the Court to
2 make an informed decision on the motion in the full context
3 of the universe of the late claim motions outstanding at
4 that time.

5 As we've done in the past, the Debtors and
6 Creditors Committee conferred with the Ad Hoc Group of
7 Individual Victims and we understand the PI Group does not
8 oppose postponing the decision on the motion. So
9 accordingly, we would ask that the Court order -- that the
10 order filed at Docket No. 5345-1 be entered. And with that,
11 I'm happy to answer any questions the Court might have.

12 THE COURT: All right, thank you very much for
13 your presentation. Very helpful. Let me ask Mr. Preis if
14 there's anything to add from the Committee.

15 MR. PREIS: Thank you, Your Honor. No, nothing to
16 add.

17 THE COURT: Right. Thank you and an abundance of
18 caution, let me ask if there's anyone else who wishes to be
19 heard on the record as to this particular motion and
20 request. Let the record reflect there's no one else who is
21 chiming in. That is not surprising, given the circumstances
22 here.

23 I'm happy to grant the request to enter the
24 proposed order. As we've discussed in prior hearings, this
25 is a way to try to make sure that folks who are similarly

1 situated are treated in fact in a similar fashion and that
2 that -- given the procedural posture of the case, that this
3 is an approach that makes the most sense.

4 And as did the prior occasions, happy to grant
5 your request for relief to enter the proposed order and
6 allow us to address this in fullness of time in a way that
7 allow us to make the best decision and most fair decision
8 possible. So your request for the order is granted. Make
9 sure we have an electronic version of it and I will get it
10 entered.

11 And I think that resolves that particular issue.
12 Thank you very much and it's always nice to see a new face.
13 So I commend the firm for encouraging its young lawyers to
14 literally be heard. So thank you very much. Look forward
15 to seeing you again in the future.

16 MS. BENEDICT: Thank you, Your Honor. I'll turn
17 the podium over to my colleague, Mr. Kaminetzky.

18 THE COURT: All right. Thank you very much. Mr.
19 Kaminetzky.

20 MR. KAMINETZKY: Once again, Benjamin Kaminetzky
21 of Davis Polk for the Debtors. I believe that brings us to
22 the second and final item on the agenda which is the --

23 THE COURT: All right, and before we get into the
24 merits of it, I just wanted to jump in with an observation
25 because sometimes remembering being on your side of things,

1 you're trying to read the tea leaves as to what the Court is
2 doing or not doing.

3 So let me just remove any mystery to the extent
4 there was any. Particularly in cases if you inherit them
5 and there's a lot of history behind some of these things,
6 which is true here, I will default to having status
7 conferences. That's my go-to maneuver, frankly, just to
8 make sure that I'm as best informed and that I'm also not
9 wasting anybody's time so that people know, oh, we're just
10 going to talk about, we're not going to argue it.

11 So that sometimes is the most efficient way to
12 handle things. It sometimes is not, but that's the intent
13 behind it and so I wanted to let people know. I will also
14 say that I realized something that I hadn't seen, I think,
15 before, when I looked at the application. And again,
16 there's a history here which I'll get into in a second, is
17 that the 31st amended order states that the Court may
18 determine whether such additional action should be enjoined
19 pursuant this order without further proceedings even, and I
20 don't think I had seen that.

21 So when I saw that, I realized that perhaps I had
22 added another layer process onto this, which we can talk
23 about. But again, I think my first reaction was to have a
24 status conference to chat with all of you. But since then,
25 I've gotten a chance to I think wrap my brain around this a

1 little bit, in a little more detail. So with that overly
2 lengthy explanation, I'll turn it back over to Debtors'
3 counsel.

4 MR. KAMINETZKY: Thank you, Your Honor. And I
5 believe we read the tea leaves correctly. What I intend to
6 do, Your Honor, is just give you a -- before we get to the
7 actual, you know, scheduling part of this, I'd very -- I'd
8 like to very briefly recap the history of the preliminary
9 injunction and its role in this case. I believe that with
10 that context the Court will better understand plaintiffs'
11 role in the case and what plaintiffs' lawsuit is about and
12 what this whole preliminary injunction application is about.

13 I understand, Your Honor, that this is the -- kind
14 of the first contested matter with respect to the
15 preliminary injunction. So I think this very brief
16 introduction, I think will be help --

17 THE COURT: Yes, that's fine. And again, what
18 happens is procedurally you all will have -- I'll get a
19 question that says, how do we handle this, do we want this
20 on for here or whatever. And I haven't gotten a chance to
21 read the papers yet or fully read the papers yet. So that's
22 sort of the context for the status conference. But yeah,
23 please, go ahead.

24 MR. KAMINETZKY: Okay. So Your Honor, it's not an
25 exaggeration to say that without the preliminary injunction

1 Purdue would have likely liquidated and the parties
2 certainly would not have achieved a settlement that delivers
3 billions and billions of dollars to the American people for
4 opioid abatement and for victim compensation, including,
5 importantly, as much as \$6 billion from the Sacklers.

6 On the petition date, the Debtors were defendants
7 in over 2,600 civil actions pending in every conceivable
8 forum, state and federal, including one state that tried to
9 invoke the original jurisdiction of the United States
10 Supreme Court, state administrative tribunals, and
11 everything in between. As explained by the witnesses put
12 forth in support of our motion for preliminary injunctions,
13 the Debtors were spending over \$2 million dollars per week -
14 - per week -- defending these massive amounts of actions.

15 Now in a normal bankruptcy case, as Your Honor
16 well knows, the filing of the petition and the position of
17 the automatic stay would have paused this deluge of
18 litigation, but not here. Litigation became if anything
19 more frantic and more chaotic with the filing of the cases
20 for two basic reasons.

21 First, hundreds of cases against the Debtors were
22 brought by governmental entities ranging from states,
23 municipalities, tribes, hospital districts, and housing
24 authorities. Many of these entities asserted that their
25 cases were not subject to the automatic stay under the

1 police power exception in 362(b)(4) and thus litigation and
2 the fight among the governmental entities to be the first in
3 the frantic race to the courthouse continued even after the
4 petition date.

5 The second reason is that hundreds of the cases
6 sued the Debtor -- sued the non-Debtor Sacklers. Indeed, as
7 the bankruptcy filing became more imminent and was widely
8 reported, many people sued only those related parties, only
9 the Sacklers. But these suits were suits against the
10 Debtors in all but name as they hold -- they sought to hold
11 these related parties, meaning the Sacklers, liable for the
12 alleged misconduct and the damages wrought by the Debtors.

13 Now, this value destructive and chaotic litigation
14 free-for-all ended only when Judge Drain granted the
15 preliminary injunction motion. The litigation pause that
16 the injunction provided, stopped the legal fee hemorrhaging
17 and more importantly, created the condition that led to the
18 phase one mediation which resulted in a successful
19 consensual allocation of estate recoveries among the private
20 and public creditors and then the phase two and phase three
21 mediations which led to the Sackler settlements in
22 increasing amounts and with increasing creditor support.

23 None of that would have been possible had the
24 Debtors' creditors remain locked in this (indiscernible)
25 struggle to be the first to secure the biggest verdict in

1 the most favorable forum to ensure the largest slice of the
2 pie. But the importance of the preliminary injunction is
3 not just creating the conditions for a successful case and
4 an unprecedented settlement. The preliminary injunction
5 also imposes what we call the voluntary injunction and this
6 was quite unprecedented.

7 It was a carefully negotiated set of obligations
8 and restrictions on the Debtors that included the obligation
9 not to employ sales representatives to promote opioids and
10 the obligation not to support advertising that promotes
11 opioids. This provided the creditors, plaintiffs with
12 greater injunctive relief against the Debtor than they could
13 have secured in their suits subject to the preliminary
14 injunction.

15 The preliminary injunction also requires that the
16 Debtors retain a monitor to oversee and to report to the
17 Court compliance with the voluntary injunction. And
18 critically, as long as the preliminary injunction remains in
19 place, the Sacklers are bound to a broad anti-secretion
20 order that ensures that they do not transfer assets in a
21 manner that would frustrate any judgment against them. The
22 current preliminary injunction order runs until 30 days
23 after the Second Circuit rules.

24 Now, with this background -- now, let's just turn
25 for a moment to what's before Your Honor in today's status

1 conference. What you have is the Lac La Ronge objection to
2 the injunction which would let them, and them only, jump
3 ahead of thousands of plaintiffs who filed their lawsuits
4 years ago and allow them and them alone to litigate the
5 Sacklers -- to litigate against the Sacklers.

6 So who are these plaintiffs? Plaintiffs, just to
7 be clear, is not Canada. Plaintiff is not a class of all
8 First Nations of Canada. Plaintiff is a single First
9 Nation, which, according to plaintiff, consists of
10 approximately 11,000 people located in Saskatchewan. This
11 is important because, as the Court may recall, all of the
12 provinces of Canada, including Saskatchewan, entered into a
13 stipulation in July 2021. The provinces withdrew their
14 proofs of claims against the Debtors.

15 The Debtors in exchange agreed not to seek an
16 injunction or relief from the Canadian provinces claims that
17 are not based on the conduct of the Debtors. There is a
18 suggestion in plaintiffs' papers that it has been ignored or
19 excluded. This is false. Plaintiff first filed its proof
20 of claim, proof of claim in this case, against the Debtors n
21 July 2020.

22 We heard nothing from plaintiffs until 21 months
23 after the preliminary injunction first issued and about a
24 year after it filed its proof of claim when plaintiff
25 objected to confirmation, which objection Judge Drain

1 overruled.

2 We also understand that the plaintiff is subject
3 to a stay in Canada that enjoins it from suing the Sacklers
4 in Canada. And so plaintiffs sued here down the street in
5 New York Supreme Court, years after everyone else. Now,
6 what is the plaintiffs' case about? Plaintiffs' case is not
7 really about Canada or Purdue Canada. It's all about Purdue
8 meaning the Debtors.

9 Although plaintiff names the Sacklers, its
10 complaint is really about what the Debtors allegedly did
11 wrong in the United States, which plaintiff alleges had
12 consequences in Canada and the Debtors' conduct is the basis
13 for plaintiffs' claims against the Sacklers who allegedly
14 directed, oversaw, or otherwise participated in the Debtors'
15 alleged misconduct.

16 This much is obvious from even a short skim of the
17 complaint. Plaintiff mentions Purdue meaning the U.S.
18 Debtors in approximately 89 paragraphs of its complaint and
19 plaintiff mentions the United States or one of its states or
20 government in approximately 40 paragraphs. By contrast,
21 Purdue Canada is only mentioned eight times in seven
22 paragraphs.

23 So let me be clear. The complaint that was filed
24 in New York Supreme Court by this plaintiff is virtually
25 identical to the complaints against the Sacklers that were

1 filed prepetition by many states that Judge Drain enjoined
2 more than three years ago. And to be clear, the fact that
3 one plaintiff claims against the Sacklers arises under the
4 Canadian Competition Act does not -- does not -- make
5 plaintiffs' complaint any different.

6 Just like plaintiff, the states routinely stated
7 their own -- stated their own unique circumstances,
8 including their own Unfair and Deceptive Trade Practices Act
9 in their lawsuits. For example, Massachusetts sued the
10 Sacklers for unfair and deceptive acts and practices under
11 Massachusetts law, its own bespoke statutes. So the fact
12 that this is a suit brought by a single plaintiff in New
13 York Court on a virtually identical foundation to many of
14 the other complaints filed long before and since the
15 petition date, means that there is no need for more briefing
16 and no need for more testimony.

17 The overall legal framework for the preliminary
18 injunction has been exhaustively briefed and does not to be
19 -- appear to be in dispute. The Debtors and opposing
20 parties filed approximately 300 pages of briefs before Judge
21 Drain, and again extensively briefed the issue in the appeal
22 before Judge McMahon, where Judge McMahon affirmed Judge
23 Drain's imposition of the preliminary injunction.

24 And focusing on plaintiffs, any issue specifically
25 relevant to plaintiffs has also been briefed extensively as

1 Your Honor saw. Plaintiff filed a 29-page brief which
2 covered every topic relevant to the injunction and a number
3 of topics entirely irrelevant to the injunction, including a
4 rehash of its confirmation objections, and we filed a 26
5 page response explaining why the legal and factual record
6 supports enjoining plaintiff from pursuing its newly filed
7 case.

8 So in sum, Your Honor, unless you have any
9 specific issues that you need additional briefing, we simply
10 believe none is necessary. Now, there was also a suggestion
11 that -- and I'm wrapping up -- that there may be a need for
12 testimony. And let me say this about that. In 2019 when we
13 litigated the preliminary injunction, we offered three
14 witnesses in support of the preliminary injunction.

15 It was the Debtors' investment banker who
16 testified about the monetary cost of litigation on the
17 Debtors. It was the Debtors' financial advisor who
18 testified about the operational burdens of litigation and
19 the Debtors' defense lawyer in the prepetition opioid
20 litigation who testified about the Debtors' post-petition
21 involvement in litigation nominally against the Sacklers.

22 Now, although our preliminary injunction motion
23 was opposed at the time by the attorney generals of 25
24 states and 500 municipalities and tribes, not one of these
25 objectors sought to cross examine any of these witnesses at

1 the October 11, 2019 hearing --

2 THE COURT: Well, let me --

3 MR. KAMINETZKY: -- and why was --

4 THE COURT: Let me just interject here just to
5 take something off the table. I didn't see anything in the
6 back and forth, and Mr. Underwood in his comments can convey
7 his views that suggested that this is a factual issue.
8 Right? It's this -- I think this is more a question of how
9 does the law apply in these circumstances and in the context
10 of the case. So I'm not -- I don't see any particular
11 factual issues based on the -- on where we've been and where
12 we currently are.

13 MR. KAMINETZKY: Okay, I'll stop then, and if Mr.
14 Underwood says otherwise, I can respond. So let me just sum
15 up then. This matter is really simple, Your Honor. All
16 that's needed is a straightforward application of
17 uncontested law to facts that have been long established and
18 consideration of a complaint that is in substance identical
19 or virtually identical to the many other complaints subject
20 to the preliminary injunction.

21 So therefore, we respectfully request that the
22 Court ruled on the papers or set this matter for oral
23 argument as expeditiously as possible, so that we can stop
24 consuming estate resources relitigating issues settled long
25 ago. Now, I shudder to think about the floodgates that

1 could open if the Court indulges this belated and
2 unwarranted attack on the preliminary injunction at this
3 point. I mean, we have, you know, thousands of complaints
4 that have been enjoined or stayed for three years now, that
5 asserted virtually the same causes of action, and instead
6 we've been focusing on a value maximizing case where
7 significant dollars could go to the American people. If
8 that gets all blown up --

9 THE COURT: So the only --

10 MR. KAMINETZKY: --point.

11 THE COURT: -- question I had and the only thing
12 I'll -- again, also ask Mr. Underwood this question -- is
13 the procedural posture of the case. Right? We're all
14 acutely aware of where that is, which is with the Second
15 Circuit and we're also acutely aware of the fact that no
16 matter what the Second Circuit does, there's a chance that a
17 party may ask for further review and there's a chance that
18 the Supreme Court might take such review.

19 So that's really, I think, the only thing that's
20 changed is the passage of time, given where we are. And so
21 that would be the one thing, the only thing that I can think
22 of that would be helpful for you to briefly address.

23 MR. KAMINETZKY: Your Honor, I'd be happy to.
24 Whatever the Supreme Court does -- you know what we hope it
25 does -- it cannot be that the next step is everyone goes

1 back to the original, I guess, fight against all and the
2 original natural everybody 2,600 plus, plus, plus
3 plaintiffs, all running to Court trying to secure their own
4 judgments, trying where -- rather than some sort of
5 consensual deal where the estate is divided up in some sort
6 of consensual and fair manner, that what resumes is, what
7 was the state of play prepetition or even post-petition,
8 whereas literally a race to the courthouse so that folks can
9 secure their own slice of the pie.

10 And Your Honor, I add to that, that the largest
11 creditor in a sense of the Sacklers is the Debtors. The
12 Debtors have extraordinarily serious claims against the
13 Sacklers, and to allow anyone to jump the line at this point
14 and litigate claims that Judge Drain found are very similar
15 to the Debtors' claims against the Sacklers would also
16 possibly undermine, you know, the settlement and all the
17 progress that has been made.

18 So we're all frustrated by as long as this took,
19 and -- but I should note that there are four factors to the
20 preliminary injunction, none of which is the passage of
21 time. It's basically as the Court has found and has been
22 confirmed, it's basically whether a successful
23 reorganization is more likely with the preliminary
24 injunction or without the preliminary injunction. And I
25 must say that really, no matter what the Second Circuit

1 does, but we're not -- you know, we're not even there yet.

2 But at this point in time standing here today
3 waiting for the preliminary injunction, it cannot be that
4 the estate would be better off if everyone goes back to
5 fight each other, which would be the -- and also, it would
6 also be quite frankly -- I mean, we could also have the
7 Sacklers walk away from the deal if, you know, if they -- if
8 litigation resumes. So this is a very dangerous time and
9 we're playing with fire.

10 And -- but Your Honor, the preliminary injunction
11 expires 30 days after the Second Circuit rules. So, you
12 know, we're going to all have to come back to you when the
13 Second Circuit rules and whether we need a -- on a further
14 injunction or not or something else, we're going to come
15 back to Court and discuss that with Your Honor. But
16 certainly at this point in time, it's not time to upset the
17 apple cart. Thank you.

18 THE COURT: Thank you. All right, Mr. Underwood,
19 let me hear from you.

20 MR. UNDERWOOD: Thank you, Your Honor. I think
21 that, you know, in principle what's important out of the box
22 is to understand that I don't -- we're here for a particular
23 reason and it's a reason that's different than these 2,600
24 plus, plus, plus other creditors.

25 THE COURT: Well, I -- this do I long to hear. I

1 don't -- I'm not seeing the daylight that you're hinting at,
2 but explain to me what that looks like.

3 MR. UNDERWOOD: Absolutely, Your Honor. So in the
4 first case, Lac La Ronge is a Canadian First Nation.
5 They're not a U.S. state. They're not seeking to enforce
6 U.S. police powers as was the issue previously in the
7 Dunaway case in part. So that's one distinction.

8 The second distinction, I think that's important
9 is with respect to this notion that yes, Lac La Ronge filed
10 a proof of claim in this bankruptcy case and that proof of
11 claim was undergirded by what was and is a class action
12 complaint up in Canada with respect to all opioid
13 manufacturers. And in fact before the CCAA in Canada, there
14 is stay relief in Canada under that complaint to now name at
15 least the Purdue Canada entities there. And remember,
16 Purdue Canada is not a Debtor. It is -- those are not the
17 Debtor entities.

18 THE COURT: Well, but neither are the Sacklers,
19 right. So here's my concern, is what has changed. I
20 understand the passage of time. Nobody's happy with the
21 passage of time. You didn't file us a couple of years ago,
22 you filed it now. But what has changed from the litigation
23 free-for-all that existed before the primary injunction and
24 all of the problems that that brought to the case and
25 frankly, to victims who were all going to have to elbow past

1 each other in the race to the courthouse?

2 It seems inconceivable to me that it would be fair
3 or equitable to allow only your clients to go forward as
4 opposed to everyone else. And so that's -- I don't
5 understand how -- I understand what you want, but I don't
6 understand how it would be all possible to give you what you
7 want without everyone else coming to the courthouse and
8 requesting the same relief, saying that we think we are
9 entitled to move forward.

10 MR. UNDERWOOD: Your Honor, I think a good portion
11 of the case is not my client's complaint, rather, but just
12 the bankruptcy case generally has been built on this
13 outstanding fear of a parade of horrors. I -- first of
14 all, preliminarily, one of the things I might suggest is
15 that in fact, you don't see a long line of people here
16 today. You haven't seen a long line of people --

17 THE COURT: That's because there's an injunction
18 that's been extended on numerous occasions. So the word is
19 out, right, there's been an injunction and then there's been
20 an extensive decision by Judge Drain on it and extensive
21 decision by Judge McMahon on it. So I think it's because
22 people have read that decision and understood the reasons
23 for the injunction and the fact that was upheld on appeal.

24 That's why there's no line. I mean -- and it's
25 during the original litigation of the request for an

1 injunction, in fact, there was a line. There were a lot of
2 people on the other side of the issue. And so that's where
3 the line was. And so I think the fact that there's no line
4 is just a reflection of the fact that people said, well,
5 we've been heard, we haven't prevailed on the issue. We
6 went and appealed it and we didn't prevail there. So for
7 better or for worse, this is where we are.

8 MR. UNDERWOOD: Yes. And so I think your
9 question, Your Honor, which I was trying to get to address,
10 which is simply that you asked what has changed, what is
11 different. Well, clearly, I believe that the claims that
12 are asserted by the plaintiff in the New York State
13 complaints are different and we could get into that, but I
14 think I want to answer your primary question first --

15 THE COURT: Well, tell me --

16 MR. UNDERWOOD: -- which is --

17 THE COURT: -- how they're different? There's a
18 fairly extensive chart in the reply that compares all of
19 your allegations -- well, compares your allegations with
20 allegations and complaints subject to the injunction. And
21 that's on Page 15, and of course it's discussed throughout
22 the reply as well. And I think the top level view to dumb
23 it down a little bit, is that the Sacklers are all sued in
24 the context of their role in running the Debtors.

25 And so that's -- and that's how you phrase it and

1 that's how everybody else phrases it, and that's why the
2 Debtors, among many other reasons, the Debtors are involved,
3 as involved as they can be, even if they're not named. And
4 so you're talking about Purdue's sales strategy being
5 deceptive. There's countless references to Purdue, the
6 Sackler family overseeing Purdue's strategy and this goes on
7 and on and on.

8 So I appreciate your candor, but what it means is
9 that there's really no attempt to separate this -- these
10 allegations really from the allegations in other cases that
11 then factor the reasons for seeking the injection in the
12 first place. Again, I understand your frustration with the
13 passage of time. We are all anxiously awaiting the Second
14 Circuit's decision. That may or may not be the end of
15 appellate litigation. It is what it is. And so we're all
16 waiting for that to happen, but it doesn't change sort of
17 the facts on the ground vis-à-vis the need for the
18 injunction in the first place.

19 MR. UNDERWOOD: So Your Honor, I think the
20 distinction with regard to the complaint is it has to do
21 with the law under which it arises, meaning our allegations
22 in effect are directly against the Sacklers. The
23 Competition Act is a -- it's a criminal statute in Canada
24 that has private right of action. This is a direct cause of
25 action. It's not property of the estate. I don't believe

1 the estate could bring it. The claims that we are bringing
2 are not subject to indemnity or contribution. There's a
3 genuine question here of whether in any way, shape, or form
4 the Court can actually cross the bridge on related to
5 jurisdiction.

6 And I think to the extent that I referenced with
7 respect to this conference that testimony might be required,
8 my only reason for asserting that was that there is an
9 analysis potentially of Canadian law here, what the
10 Competition Act enables and what is the gravamen of these --

11 THE COURT: So you -- so isn't that true for every
12 state in the union that has its own laws to enforce, as --

13 MR. UNDERWOOD: Well, I think that --

14 THE COURT: -- as their own, you know, federalism.
15 Their -- we've got 50 sovereign states as well as one large
16 sovereign capital U, capital S, United States. I mean,
17 there's 50 sovereigns, so there's 51 here. And certainly
18 the federal government has -- the settlement was partially
19 possible because the federal government put its claim to the
20 side. And so there's a lot -- there are a lot of
21 sovereigns. And so how is it that that your 11,000 people
22 tribe is so markedly different from everyone else? I'm not
23 seeing it.

24 MR. UNDERWOOD: Well, I think first of all, that's
25 why we're here. I think this was an untested question. As

1 it stands right now, it suggests that, yes, there is an
2 appellate record here and the estates are where they are.
3 In fact there -- at this point, if there was a 12th
4 confirmed plan, the states would be consenting. My clients
5 do not. And so that's --

6 THE COURT: Well, but that's on appeal. That
7 that's on appeal. I don't think that changes. If the
8 appeal, the existence of the appeal of the confirmation
9 hearing and Judge McMahon's ruling on the confirmation
10 change things, I think you would have all of the folks who
11 originally opposed the injunction back here again. But they
12 haven't because I don't think there's anything about Judge
13 McMahon's decision that suggests her affirmance of Judge
14 Drain that suggests that an appeal, that confirmation
15 appeal, ongoing process, is going to change -- changes the
16 calculus under these facts and circumstances.

17 MR. UNDERWOOD: And I guess, Your Honor coming
18 back to your initial question, what has changed in the past
19 three years other than the passage of time; that's a good
20 question and I think it could be addressed in a couple of
21 different ways. One factor to remember is the fact that
22 these, these Canadians, these Canadian plaintiffs, have been
23 enjoined in Canada from pursuing a non-Debtor entity for
24 those three years. That has changed now.

25 There's stay relief so that my clients and others

1 can pursue the non-Debtor entities, but in the meantime, we
2 also have what is an effective side deal, this settlement
3 with the provinces that was engineered by the Sacklers, I
4 gather, and their non-Debtor entities in Canada, and our
5 concern is that that settlement by virtue of the
6 securitization that may be embodied in it will foreclose our
7 ability to recover against Purdue Canada assets which are
8 non-Debtor assets and which, you know, I also add with
9 respect to that it's not entirely clear to me, but my
10 understanding was that Purdue Canada assets were already
11 committed to the reorganization and trust structure in this
12 case before this Court.

13 THE COURT: But the other side makes the point
14 that while your focus just now is on Canada, that the --
15 looking at the words in your complaint, the focus is on the
16 Sacklers and the Debtors. It's on Purdue and it's on Purdue
17 U.S. and there's in fact not that many instances where
18 Purdue Canada is mentioned. It's a focus on what was done
19 here with these Debtors in connection with the Sacklers.

20 And so the focus of the complaint is on that, and
21 I don't -- that's what I'm really having trouble. And so I
22 don't know that you can re-shift your argument and change
23 the allegations of the complaint for purposes of
24 understanding your requested relief here.

25 MR. UNDERWOOD: So I think, Your Honor, where the

1 distinction was is that this isn't really about -- because
2 it is a very, very complicated Debtor and non-Debtor
3 corporate structure. This isn't about action. The
4 complaint that's filed in New York State, it's not about
5 actions that were taken by the Debtor, necessarily. It's
6 not about actions that were taken by the Canadian non-Debtor
7 entities necessarily. It is about the direct actions of ten
8 named Sacklers --

9 THE COURT: But that's not how it's pled in your
10 complaint. I mean, I just read you some of the instances
11 and the way it's framed in your complaint. And frankly,
12 again, I said I appreciate your candor because you didn't
13 try to, as they would pejoratively say, put lipstick on a
14 pig and claim it's something else. I think what you said
15 was, is to frame the allegations accurately, to talk about
16 the Sacklers' actions in connection with the Debtors.

17 And it's that interrelationship that led to the
18 injunction in the first place. So, again, I don't want to -
19 - I don't want to harangue you here, Counsel. I just want
20 to make clear what my concerns are and I didn't say this at
21 the beginning, and I should. Obviously, the arguments about
22 the injunction are separate and apart from any sympathy I
23 have to folks who are plaintiffs who are alleged victims
24 here. And obviously you take that seriously, I take that
25 seriously, the Debtors take that seriously.

1 And so I'm not -- nothing I same should be taken
2 as any -- in any pejorative way to their -- the merits of
3 their claims. The problem is for, for you, is that sadly
4 they're not alone. And that there are a lot of folks in
5 exactly the same situation who have pretty much the same
6 claims, albeit under different legal statutes and rights
7 that vary from jurisdiction to jurisdiction. So what else
8 would you like to, to address?

9 MR. UNDERWOOD: So I think, Your Honor -- I mean,
10 I think what the crux of this is, is there is a question who
11 out there, who in the world has a direct claim against the
12 Sacklers based upon their own acts whether or not they also
13 were wearing a hat that said, Purdue Pharma U.S. or a hat
14 that said one of their other entities or even perhaps a
15 trust had or certainly even Purdue Canada.

16 The action that is positive is direct as to the
17 acts of a very limited number of people where there is a
18 basis to allege that their acts or statements under the
19 Competition Act directly impacted these plaintiffs in
20 Canada. That's what's different, and as far as I know, I'm
21 not aware right now of any other plaintiffs or creditors
22 that have come forward with a similar legal or perhaps
23 there's a similar factual basis, but not necessarily as far
24 as I know a similar legal basis.

25 And so that is ultimately, Your Honor, why I'm

1 suggesting that if we do have a full and robust hearing on
2 this question, would like the --

3 THE COURT: Well, listen. We -- I think we've
4 segued from a status conference to an argument. And so I
5 think that's pretty clear and one -- I think Mr. Kaminetzky
6 went there. I wanted to give you a chance to go there. So
7 I think now is an opportunity to make the legal argument.
8 So again, that's -- I was struck by the fact that the
9 injunction itself allows me to make these rulings even
10 without a hearing, but I'm happy to hear from you.

11 I think it's appropriate and only fair. But I
12 don't contemplate another hearing now, given that we sort of
13 segued into the oral argument, so -- which is which is where
14 we are. So what else did you want to address, Counsel?

15 MR. UNDERWOOD: So I think, you know, the way that
16 I look at this ultimately, you come down to a question of
17 related to jurisdiction. I think it's perhaps a close call,
18 but I do think that the Court would be best informed if I'm
19 able to provide the Court with a better briefing on Canadian
20 determinations, rulings, and --

21 THE COURT: Why is there -- why would additional
22 briefing be appropriate? I'm not sure. So you filed your
23 opposition to extension consistent with the way it's laid
24 out. The Debtors filed a reply. So I was a bit surprised
25 here. Mr. Kaminetzky discussed additional briefing in the

1 sense that I don't know why that would be appropriate. You
2 filed a robust brief. I have it. We're having argument.
3 That's fine. That's all appropriate and sensible but I
4 think once I'm done here today, I will consider the matter
5 fully submitted. I don't think that additional briefing, no
6 one's pointing me to anything where additional briefing is -
7 - again, normally what you have here, as I understand it,
8 the way it worked is that essentially the opening brief here
9 is the opposition to extension.

10 So that is, the Debtors essentially ask to extend.
11 Somebody files an opposition to that motion, which you did.
12 And then the Debtors filed the reply. So -- and the
13 opposition is extensive. So I have it. It's at docket --
14 it's on the docket. It is -- contains not only your
15 extensive legal brief but also attachments to give me an
16 understanding of what the complaint sets forth.

17 So it's a 29-page brief and then the verified
18 class action complaint and demand for jury trial in the
19 State of New York, and that complaint itself is extensive
20 and is -- trying to get -- some 57-plus pages. So I have
21 that. So what else would you like to tell me, Mr.
22 Underwood?

23 MR. UNDERWOOD: So I think Your Honor, I
24 appreciate your summarization. If we're talking right now
25 about an actual argument of the matter, this comes down to

1 two questions, Your Honor. Can the Bankruptcy Court extend
2 this injunction to cover these plaintiffs, and should they?
3 And I think that's a two part question. In terms of the
4 should, I, you know, I indicated in our pleading opposition
5 filed with the Court -- which is again, on relatively
6 shortened timeframe that for instance, there is no
7 entitlement to contribution or indemnity under the Canadian
8 statute or Canadian law. And I don't know whether or not,
9 Your Honor, that actually is going to be part of your
10 decision on this matter, and that's part of the reason why I
11 was glad that we were -- sit down for a conference because
12 if that is, I'm happy to submit briefing on those issues or
13 others, that --

14 THE COURT: Well, I guess my thought is that there
15 are a number of things addressed in the original injunction
16 and as well as the affirmance of the injunction, and if you
17 look at the framework for it, it's not as narrowly parsed as
18 your -- as you've just framed it, meaning that if it's --
19 there are a number of ways you sort of get at the
20 relationship between the Debtors and the Sacklers here,
21 whether you look at it as a matter of if there are issues
22 decided in a Court of law about the Sacklers' actions as
23 head of various entities, including the Debtors, the effect
24 that will have on the Debtors.

25 You can look at the cost involved in litigation.

1 So it's not simply just a matter of indemnification
2 necessarily. There are a whole host of factual
3 underpinnings that were relied on by Judge Drain as well as
4 the District Court in the affirmance.

5 MR. UNDERWOOD: That's correct, and I think we
6 address some of those facts directly in our directly in our
7 pleading. I certainly allude to some issues of law that I
8 think might be -- you know, ultimately, I guess Your Honor,
9 the question is really how the decision to extend the
10 injunction arises under Section 105, how the Court, if it
11 chooses to follow that path which is to buttress that
12 decision or on the other hand, you know, not extend the
13 injunction, and I think there's a legal basis. There's a
14 factual basis at this point in time not to extend the
15 injunction.

16 I don't necessarily foresee that there would be,
17 because factually and legally this is different. I don't
18 necessarily foresee that there would be a race to the
19 courthouse again by all these parties that are already
20 enjoined. I think this is a --

21 THE COURT: Well, but -- so that's just an
22 argument to say Judge, you should grant it to us, and the
23 way you solve the problem with the other parties is just
24 grant it to us. I don't think the other parties will see it
25 that way. So -- right? They will come in and say we have

1 our own claims under our own statutes dealing with the
2 Sacklers' actions, and so Mr. Underwood has no right to --
3 he can make whatever arguments he wants, Judge, but it's --
4 for very, very similar reasons, you should grant our request
5 to no longer extend the injunction.

6 And so what it will mean is that before we get
7 through all the levels, before we get a decision on appeal
8 or any further appeal, and before there's any chance to in
9 the aftermath or whatever those decisions are to try to
10 figure out what a bankruptcy solution would look like, we're
11 going to go back to the race to the courthouse, aren't we?
12 How are we going to avoid that?

13 MR. UNDERWOOD: So Your Honor, I think, you know,
14 one of the issues with respect to the appeal and this
15 application is the fact that yes, my clients are part of the
16 group that is a party to -- they're appellees right now
17 before the Circuit and cross appellants on the
18 categorization issue before the Circuit.

19 But I think what the implication there is, is
20 first of all, we don't know how the Circuit's going to rule
21 but there is a scenario where the circuit and perhaps
22 ultimately the Supreme Court rules favorably with respect to
23 my client. But my client's in effect alone. I'm not sure
24 that there might not be a decision that has in effect a
25 carveout for this type of claim established under the

1 Competition Act and therefore we're just wasting time.

2 THE COURT: But isn't that -- if that's the kind of
3 carveout that you think might come that would justify you,
4 your client and only your client, to move ahead, isn't that
5 the reason wait for a decision? I mean, because otherwise
6 you're asking me to make that call and say, I think that
7 your claim is sufficiently distinct, that your client and
8 your client alone among the 2,000-some-odd lawsuits should
9 be allowed to go forward.

10 MR. UNDERWOOD: I think that is a valid counter
11 argument, Your Honor, but I think that what I'm driving at
12 also is if you look at the parties that remain in the appeal
13 before the circuit, it's effectively real parties in
14 interest, my clients, and the U.S. Trustee's Office and some
15 pro ses. So I think there's a -- you can read the tea
16 leaves there and sort of say, well, probably all these 2,600
17 others on some level or other are in effect consenting to
18 this 12th amended plan or any treatment that's similar to
19 it.

20 THE COURT: But the plan is different than the
21 injunction, right? The injunction makes the plan -- gives
22 us a chance to deal with the plan. If there's no
23 injunction, there really won't be a plan. What -- as I
24 understand it, again, to think of it in broad strokes, if
25 you were to explain to somebody who's not a bankruptcy

1 lawyer, if you don't have the injunction in this case, it's
2 essentially as if the bankruptcy is dismissed because it's
3 the race to the courthouse. Everybody sues. It's self-
4 help. And it means that not only is there a race to the
5 courthouse, but there's no real chance that whatever
6 claimants get that it will be fair or equitable because it
7 will be decided in as many jurisdictions as there are as to
8 what the claimants in those individual cases should get.
9 And so that's my concern.

10 So I realize, looking at the time, Mr. Underwood,
11 I'll ask you to -- I'll give you another ten minutes or so
12 for anything else you wanted to argue. Again, I have read
13 your papers and I think I understand your arguments about
14 the jurisdictional issues again, which are addressed in
15 depth in both Judge Drain's decision and in Judge McMahon's
16 decision.

17 MR. UNDERWOOD: Thank you, Your Honor. I'll be
18 very brief, nowhere near ten minutes. I think ultimately,
19 look, the law under which this complaint arises is distinct
20 from any of the other laws that have been addressed by the
21 Dunaway decision or anyone that has pushed it before Judge
22 Drain or the District Court. I think the actual allegations
23 and the parties to the New York State complaint as filed are
24 different than these other complaints, meaning this is
25 strictly as to a limited number of active Sacklers.

1 There is a question of which hat they're wearing
2 when they take certain acts, and my argument, I suppose at
3 heart -- this is the problem with this case -- is that they
4 created a paradigm, the Sacklers, to their own personal
5 benefit that effectively allows them to (audio drops) at
6 different times which hat they're wearing. They're getting
7 covered for non-Debtor activity from the Debtor in this case
8 and we're trying to think about not only non-Debtor activity
9 from U.S. non-Debtors, corporate entities, but Canadian
10 corporate entity non-Debtors as well.

11 So there's that issue itself of under the Section
12 105(a) necessary and appropriate standard. I understand
13 where the Court is coming from, that it would appear that it
14 is necessary to continue to enjoin claims in order to
15 protect the aspects of a potential reorganization here.

16 That may be necessary, but then we also reach the
17 question of whether it is appropriate. The question of
18 whether it is appropriate hinges on whether or not this
19 Court is willing to now and I suppose in the future
20 encourage or enable owners of multinational corporations to
21 structure them in such a way that they can take the benefits
22 of foreign stays in non-main foreign proceedings, take the
23 benefits of the automatic stay in the United States and then
24 extend that to the owners of those corporations, no matter
25 what they've done, without it really being tested.

1 THE COURT: And you started using the language of
2 Chapter 15 here, a non-main case. I don't think anybody
3 would argue that the bankruptcy here wouldn't be essentially
4 the main proceedings that others might seek to recognize,
5 right. I think this is, given the Debtor U.S. entities here
6 and the scope of the case, I think it's clearly, we're not -
7 - it's not the tail end of the dog in terms of a
8 restructuring. But let me ask you, when you talk about
9 appropriate, again -- and I'll just leave you with, it's
10 really the same question, so I apologize to the extent.

11 I'm not trying to be pedantic or anything, but the
12 frustration is -- I understand parties are victims. They're
13 frustrated with the passage of time and they look to the
14 fact that they have their own self-help opportunities.

15 But again, I don't understand, if -- even
16 regardless of what the Appellate Court decides, there's
17 either an agreement that could potentially -- existing
18 agreement that could be essentially reinstated or there's a
19 deal to be struck under the legal parameters of whatever the
20 decision is, but again, one that would hopefully be fair and
21 equitable to all the folks who are opioid victims here as
22 well as other creditors in their in their stead, that is
23 tribes, municipalities.

24 And so when you talk about appropriate, why isn't
25 that the appropriate result here? Isn't that -- isn't the

1 injunction serving that appropriate purpose, again, thinking
2 about what bankruptcy is supposed to do?

3 MR. UNDERWOOD: I think that the result may be
4 necessary, but the question of whether it's appropriate, as
5 I was suggesting with regard to the protection of parties
6 who my clients haven't been able to pursue in Canada due to
7 the related, you know, non-main stay up there, is that they
8 haven't been able to necessarily pursue in the U.S. due to
9 the injunction and due to the stay generally, whether the
10 protection that is provided here -- and the complaint is
11 narrow in the sense that it is not a shotgun complaint
12 against every non-Debtor entity.

13 It's not a complaint against every Sackler. You
14 know, whether those ten folks continue to merit the
15 protections that are afforded by the injunction given that
16 this is at best, I think, a close call with respect to
17 related to jurisdiction, is I think the heart of the matter,
18 Your Honor, and that's in part why I think that our pleading
19 was 29 pages because there is a very complicated factual
20 history here.

21 My clients are not treated in the same way under
22 the proposed and now vacated plan or confirmed and now
23 vacated plan that every other U.S. Tribe was in the state --
24 - on the United States, that is, and then as Canadian First
25 Nation/Tribe. You know, if -- I think that if that

1 treatment had been the same, would we have gone down this
2 path? Probably not. But unfortunately, that's the status
3 of this matter generally, and that is why ultimately this
4 complaint was filed in the U.S. and that is ultimately, I
5 think, the question. If this Court, you know, even if it
6 finds that this is a necessary evil, if you -- those are my
7 words, not the Court's words -- but even if this Court were
8 to find that the extension of this injunction is a necessary
9 evil, there is still the second problem here, which is
10 ultimately is a necessary evil always appropriate.

11 And I'm not sure that on a balancing here, if
12 you're able to narrowly tailor an order that makes very
13 clear that unless you're talking about a complaint that
14 arises under a non-U.S. statute, that does -- you know, that
15 in a regimen that does not permit indemnity and contribution
16 where the claims are direct for individual acts against the
17 plaintiffs.

18 You know, I think that that's probably a list of
19 plaintiffs or creditors of my clients, that's it. And
20 that's why we're the only party that has really questioned
21 this injunction over the last two or three years. So
22 ultimately, Your Honor, I think where I am, and I know that
23 the Court has read the briefing and has been engaged in the
24 argument. I think where I am at is to the extent of the
25 Court wishes any briefing with respect to Canadian law,

1 which obviously I cannot necessarily represent, I'd be happy
2 to submit an affidavit with -- from Canadian counsel with
3 supporting case law and statute with respect to these issues
4 that relate to the relatedness of the matter.

5 THE COURT: All right --

6 MR. UNDERWOOD: And may --

7 THE COURT: I understand that. I mean, I am also
8 struck by the fact that while there are obviously Canadian
9 aspects of the complaint, it's a complaint filed here in New
10 York State Supreme Court. So it's got the Canadian
11 Competition Act, but it's got a public nuisance, and so --
12 and it was filed in New York State. So if I need that kind
13 of information, I certainly -- chambers will reach out and
14 let you know.

15 MR. UNDERWOOD: Thank you, Your Honor. I think
16 simply in concluding, I do believe that this is a complaint
17 that is fundamentally different based upon the law and to do
18 to a degree the facts as they relate to the parties from any
19 other complaints that have been asserted. I do think it is
20 a close call in terms of relatedness and frankly I think it
21 actually falls on the side of not being related to the
22 Debtor as noted in the pleading. The Debtors have already
23 established, although they have not produced as far as I
24 know, a document bank.

25 They've responded to similar discovery requests

1 dozens of times. I don't see this as being a major drain on
2 the Debtor. Its (audio drops) action against the Debtor.

3 It is an action against the Sacklers. These are the same
4 Sacklers that separately and outside of this bankruptcy --

5 THE COURT: I got it. I got that. I think we've
6 covered that extensively in the briefing as well as the
7 argument. I got that.

8 MR. UNDERWOOD: Okay.

9 THE COURT: All right --

10 MR. UNDERWOOD: Thank you. I appreciate your time
11 greatly. thank you, Your Honor.

12 THE COURT: Thank you very much. So Mr.
13 Kaminetzky, anything briefly?

14 MR. KAMINETZKY: Yeah, I could --

15 THE COURT: I've read the papers and I also
16 appreciate everybody's flexibility. I realize that once we
17 sort of segue to argument, it seemed to be appropriate to
18 have an argument if we're going to do it. That Zen saying,
19 if you're going to run, run. If you're walk, walk. Above
20 all, don't wobble. So I appreciate your flexibility and
21 segueing to an argument. I thought that might happen. And
22 I -- because the argument is helpful, I get a chance to have
23 a colloquy with folks. And so I appreciate everybody's
24 flexibility to have the argument now.

25 And so with that, Mr. Kaminetzky.

1 MR. KAMINETZKY: I'll be very brief and I'll be
2 responsive, and to the extent Your Honor doesn't need
3 something, I'm happy to move on.

4 Your Honor began by asking my friend Mr. Underwood
5 what's different about your complaint, and the answer is
6 it's not. They're seeking money from the Sacklers based on
7 Purdue, the Debtors conduct, not based on Purdue Canada's
8 conduct, period, full stop.

9 That's why the filed here in New York. So it's
10 exactly the same as everyone else who has sued the Sacklers,
11 the hundreds of other parties including states,
12 municipalities, et cetera, et cetera, that are suing the
13 Sacklers based on Purdue, the Debtors' conduct. And Mr.
14 Underwood also said well, you know, it's different because
15 it's a different statute. It's a Canadian statute. It's
16 the Canadian Unfair Competition Statute.

17 As Your Honor noted, there's two causes of action,
18 unfair competition and public nuisance. Everyone sues for
19 public nuisance. Everyone sued for unfair competition.
20 Now, let me read to you a quote and I think maybe this just,
21 you know, could put an end to this. This is a quote from
22 Maryland's brief in front of Judge McMahon on appeal of the
23 preliminary injunction. Maryland opposed the -- here's what
24 it said.

25 "Here, however" -- this is again, Maryland

1 speaking -- "the state's direct claims against the Sacklers
2 stand independently of any claims they may have against the
3 Debtors, and it is not necessary to establish the Debtors'
4 liability as a predicate to establishing the Sacklers or
5 other non-Debtors' liability for violation of state unfair
6 and deceptive trade practices statutes."

7 That's a quote from Maryland. There's a similar
8 quote from Washington. Every state has their own deceptive
9 trade practices, unfair competition, and they all asserted
10 that they have direct claims against the Sacklers that are
11 not derivative of the Debtors. I just quoted one. So it's
12 exactly -- the fact that, you know, this is Canada versus
13 Washington or Maryland, just doesn't matter. It's exactly
14 the same theory.

15 Mr. Underwood also said that, you know, in terms
16 of what changed, that there was a settlement with the
17 provinces that Purdue Canada settled with the provinces.
18 Mr. Underwood's clients objected to that settlement in
19 Canada. Their objection was overruled. They're upset about
20 it. They wanted to be cut into the Canadian settlement.
21 The Court there decided otherwise and the settlement between
22 the provinces, you know, which is like the governments of
23 Canada and Purdue Canada should stand and they're upset
24 about that, so they came to New York to sue but that's not
25 our issue.

1 They also -- you know, Mr. Underwood made
2 reference to his jurisdictional arguments and we talked
3 about this in the papers. They talk about related to
4 jurisdiction arising in, arising under. It's all a red
5 herring. All you need is related to jurisdiction for this
6 preliminary injunction. That's what Judge Drain found.
7 That's what Judge McMahon found. They found for related to
8 jurisdiction all you need is a conceivable effect on the
9 Debtors.

10 In our irreparable harm section of our brief
11 before Your Honor on this matter, we list seven harms to the
12 Debtors that'll happen if the preliminary injunction is
13 lifted. The arising in, arising under is completely
14 irrelevant. That's only relevant if we were asking Your
15 Honor to enter a final order with respect to the underlying
16 claim that's filed in state court. We're certainly not
17 asking you to do anything like that.

18 All we're doing is to ask you that you -- to apply
19 the -- to extend the preliminary injunction that's in place
20 for all these cases to this case and all you need there is
21 related to jurisdiction, and that issue has been decided by
22 Judge Drain, affirmed by Judge McMahon, based on the any
23 conceivable effect on the estate.

24 They Mr. Underwood then mentioned the indemnity.
25 He said that, you know, they can't give -- that the Canadian

1 statute is unique somehow because it can't give rise to a
2 contribution or indemnity claim. First, as we explained in
3 argument, 1.A of our reply brief, irreparable harm that
4 plaintiffs' suit will cause the Debtors and their estates
5 goes far beyond possible indemnification claim.

6 And again, I refer Your Honor to the seven harms
7 that we laid out in our brief when talking about the
8 irreparable harm prong. So it really has nothing to do
9 whether or not there is indemnification, but we do note and
10 as we noted in our brief, that the issue of whether or not
11 there's indemnification under this Canadian Competition Act
12 statute is not a settled issue in Canada. We quoted you
13 from an Appellate Court of Canada. I must say we're not
14 expert in Canada law, but some googling showed that -- and
15 we're quoting from a Canadian case -- "that the issue of
16 identification has not been considered by any Court in
17 Canada."

18 So even if you want to go there to
19 indemnification, the question isn't a settled issue in
20 Canada. And again, based on the conceivable effects test a
21 litigation about indemnification in Canada would certainly -
22 - under this Canadian statute would certainly have a
23 conceivable effect on the estate.

24 Finally, Mr. Underwood like kind of then ended off
25 by talking about their confirmation objection that they

1 objected, that they -- that the Canadian First Nations
2 weren't treated the same as domestic Indian tribes or Native
3 American tribes. That objection was overruled by Judge
4 Drain and it was affirmed by Judge McMahon that there was a
5 basis to -- I mean, it's almost -- what there is a basis to
6 distinguish. One is domestic tribes and one is Canadian
7 tribes and Judge McMahon confirmed or affirmed that there is
8 a reasonable basis to distinguish between U.S. and Canadian
9 entities.

10 That's all I have in terms of a reply, Your Honor.
11 If you have any questions, I'm happy to answer them, but I'm
12 not going to kind of like re-argue anything --

13 THE COURT: No, no --

14 MR. KAMINETZKY: -- because I think Your Honor --

15 THE COURT: I think I have enough from all the
16 parties. So my next question is, what I'm going to do is
17 I'll give you a bench ruling. I'm not going to do it today,
18 but I will do it fairly soon. Chambers will be in contact
19 to let folks know when that will be. And I guess the only
20 question I had is in light of that, if there's anything
21 that's supposed to happen in the New York State case that
22 would impose obligations or -- on the estate that would
23 happen in the next week or two that that we should discuss.

24 MR. KAMINETZKY: Your Honor, if you could direct
25 that to Mr. Underwood or the Sacklers, my belief is that no

1 one's been served yet, but I don't know that to be true
2 because we're not in that lawsuit. You know, one of the
3 parties in that lawsuit. We'll have to differ on the
4 question of any deadlines. But my latest information is
5 that no service has occurred.

6 MR. UNDERWOOD: As of my latest information, Your
7 Honor, that is correct and frankly, until there's a decision
8 that extends the injunction, I think the Sacklers could be
9 served with the complaint. Now whether or not it's
10 ultimately enjoined is its own issue.

11 THE COURT: Well, yes and no, because there will
12 be events that will need to take place once people are
13 served in terms of being in a position to respond to the
14 complaint. And so, my preference would be to have a
15 decision ready to give you, in all of its bells and whistles
16 at one time, fairly promptly and not have to worry about any
17 imposition on anyone and essentially, to stay the New York
18 State litigation until I can get you that prompt decision.

19 If that's not the case, the alternative would be
20 to tell you what my ruling -- to take a short break, tell
21 you what my ruling is going to be, and then give you a more
22 prompt explanation. I'm trying to avoid having collateral
23 consequences where folks are forced to run into this Court
24 and say, somebody's just been served. We have -- we found
25 out we have we have ten days to file an answer and they've

1 retained a lawyer and we're now being asked -- and so
2 there's a there's a tremendous possibility for having that
3 kind of a fire drill and I'd like to avoid that.

4 I don't know that it helps anybody and given the -
5 - where we are timewise, I don't know that it makes a whole
6 lot of sense to set ourselves up for a fire drill before
7 we're leaving here today. So I don't know if anybody has
8 any suggestions or thoughts on that. So I'll start with you
9 Mr. Underwood.

10 MR. UNDERWOOD: Your Honor, what I would suggest,
11 because I don't want to see a fire -- there've been enough
12 fire drill in this case and certainly the efforts of all
13 parties, I think in the case have at times been on very
14 short notice. And so what I'm thinking is I can reach out
15 to my co-counsel, the counsel that actually filed the
16 complaint, and find out the time within which they have to
17 serve the complaint under New York State law. I think it's
18 fairly liberal standard, and I think we could indicate
19 potentially to the Court that we would abstain from service
20 for a week or two, or more, whatever the Court --

21 THE COURT: Yeah --

22 MR. UNDERWOOD: -- rather than --

23 THE COURT: I think two weeks would be more than
24 enough. I expect to get back to you promptly. So again,
25 it's just not -- it's just not fair to any of you to have to

1 put that on your list of things to do. And it also seems to
2 send a signal of, like, well we haven't got a decision so
3 we'll do what we can and before -- it's just wrong on
4 several levels, so I'd like to avoid it if we can.

5 And I'm not asking for somebody to hold off for a
6 period of a month or more months. A week or two would work
7 and then that way nobody has to put that on their list of
8 things to do to monitor, to respond, and just doesn't make a
9 lot of sense to me under the circumstances. So what I'd
10 ask, Mr. Underwood, if you would do me the favor of reaching
11 out to your co-counsel or your colleague and find out the
12 circumstances and see if they'll put that off for a week or
13 two, just agree that nobody's going to get served.

14 No action needs to be taken in connection with the
15 New York State litigation. Nothing will move forward. And
16 I'll get you -- I'll get you a decision promptly. We'll
17 reach out and schedule something for a bench ruling.

18 MR. UNDERWOOD: Your Honor, would you like me to
19 reach out to counsel while we're still within this hearing?

20 THE COURT: Well, no. So here's what I would do
21 is if you would report back to chambers and to Mr.
22 Kaminetzky and let us know. If there's no such agreement, I
23 will probably reach out to you all to do something in the
24 next day or two so that -- because I'll, that's -- my hand
25 will be forced and -- well, I shouldn't say that. I think

1 it will be appropriate at that point for me to do something
2 to avoid muddying things any further.

3 So I would say, reach out to counsel. Let him
4 know and then reach out to us to let us know here in
5 chambers and then I'll take it from there, and so Chambers
6 will be in contact one way or the other. The question will
7 be what the timeframe is, depending on what the answer is
8 that you have for us.

9 MR. UNDERWOOD: Okay. Thank you, Your Honor.

10 THE COURT: All right, thank you. All right, with
11 that, anything further from the Debtors?

12 MR. KAMINETZKY: No. No, Your Honor, thank you.

13 THE COURT: All right. Mr. Underwood, anything
14 further from you?

15 MR. UNDERWOOD: No, Your Honor, and I will be back
16 to the Court shortly.

17 THE COURT: All right. I appreciate your
18 willingness to do that. I know, and again, these issues are
19 very important to your clients. They're very important to
20 all the claimants here. Totally understand. We all know as
21 folks who practice in the law that it can be frustrating as
22 folks wait for answers. And so that's one of the reasons
23 why Hamlet, when talking about the passage of time, talks
24 about the law's delay. It's one of the slings and arrows of
25 outrageous fortune. And so I appreciate, counsel's desires

1 to zealously advocate on behalf of their clients. And I
2 also appreciate your willingness to work the confines of
3 this case to try to be as sensible as possible in addressing
4 these issues. So thank you to everybody. So I'll wait to
5 hear and in any event will be in touch fairly promptly, and
6 with that, unless there's anything else, I bid you all a
7 very good afternoon.

8 MR. UNDERWOOD: Thank you, Your Honor.

9 MR. KAMINETZKY: Thank you.

10 (Whereupon these proceedings were concluded at
11 12:25 PM)

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I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: January 27, 2023